

ST 96-16

Tax Type: SALES TAX

Issue: Exemption From Tax (Charitable or Other Exempt Type)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

TAXPAYER

Applicant

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Docket #

Karl W. Betz
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES

WITNESS A, PRESIDENT, AND WITNESS B, SECRETARY-TREASURER, ATTENDED THE HEARING ON BEHALF OF THE APPLICANT (HEREINAFTER REFERRED TO AS THE "APPLICANT").

SYNOPSIS

THIS CAUSE CAME ON TO BE HEARD FOLLOWING THE APPLICANT FILING A LETTER REQUESTING A HEARING TO APPEAL THE DENIAL BY THE ILLINOIS DEPARTMENT OF REVENUE (HEREINAFTER THE "DEPARTMENT") OF ITS REQUEST FOR RENEWAL OF EXEMPTION FROM RETAILERS' OCCUPATION TAX AND RELATED TAXES.

THIS DISALLOWANCE OF THE APPLICANT'S REQUEST FOR RENEWAL OF ITS "E NUMBER" THAT IDENTIFIES ITS STATUS AS A SALES TAX EXEMPT PURCHASER OF TANGIBLE PERSON PROPERTY FOR ITS USE IS THE ISSUE IN THIS CASE. SPECIFICALLY, THE QUESTION FOR DETERMINATION IS IF THE APPLICANT ORGANIZATION IS

ORGANIZED AND OPERATED SO AS TO MEET THE REQUIREMENTS FOR EXEMPTION UNDER THE RETAILERS' OCCUPATION TAX ACT (35 ILCS 120/1 ET SEQ.).

AFTER REVIEWING THE COMPLETE TRANSCRIPT OF RECORD INCLUDING ALL DOCUMENTS ADMITTED THEREIN, I RECOMMEND THE ISSUE BE RESOLVED IN FAVOR OF THE APPLICANT.

FINDINGS OF FACT

1. APPLICANT RECEIVED SALES TAX EXEMPTION IDENTIFICATION NUMBER XXXXX FROM THE DEPARTMENT IN A LETTER DATED JANUARY 4, 1991. (DEPT. EX. NO. 1, P. 6)
2. APPLICANT'S REQUEST TO RENEW ITS SALES TAX EXEMPTION NUMBER WAS DENIED BY THE DEPARTMENT IN A LETTER DATED DECEMBER 11, 1995. (DEPT. EX. NO. 1, PP. 3-4)
3. THE SINGULAR FUNCTION OF APPLICANT IS THE OPERATION AND MAINTENANCE OF THE PROPERTY (THE "PROPERTY"), A RECREATION LODGE AND GROUNDS LOCATED ON XXXXX. (TR. PP. 12, 15-18, 29; DEPT. EX. NO. 1, P. 10)
4. THE PROPERTY LODGE AND ITS GROUNDS ARE LOCATED ON XXXXX PROPERTY ADMINISTERED BY THE FISH AND WILDLIFE SERVICE, UNITED STATES DEPARTMENT OF THE INTERIOR. (TR. P. 19; DEPT. EX. NO. 1, P. 21)
5. THE PROPERTY IS VISITED AND USED FOR RECREATIONAL PURPOSES BY DISABLED VETERANS WHO ARE CONVALESCENT PATIENTS AT THE U. S. VETERANS ADMINISTRATION HOSPITAL AND REHABILITATION NURSING HOME IN XXXXX. THESE VISITS OCCUR ON A REGULAR WEEKLY BASIS, EXCEPT IN TIMES OF BAD WEATHER. (TR. PP. 12, 15, 28-29; DEPT. EX. NO. 1, PP. 10, 27, 29-36)

6. PURSUANT TO AUTHORITY OF APPLICANT'S BY-LAWS, THE APPLICANT SOMETIMES PERMITS OTHER ORGANIZATIONS TO USE THE PROPERTY LODGE AND GROUNDS FOR RECREATIONAL THERAPY, PICNICS OR MEETINGS. THESE USER GROUPS INCLUDE NURSING HOME RESIDENTS, BOY SCOUTS, CHURCH GROUPS, THE BROWNIES, VETERANS AND OTHER ORGANIZATIONS. (TR. PP. 16, 18-19; DEPT. EX. NO. 1, PP. 10, 28, 31-36)
7. THE APPLICANT MAKES NO CHARGES FOR THE USE OF THE PROPERTY FACILITIES BY THE VETERANS HOSPITAL PATIENTS AND THE OTHER GROUPS. (TR. PP. 23-24)
8. APPLICANT HAS NEVER TURNED DOWN AN ORGANIZATION'S REQUEST FOR USE OF THE PROPERTY, ACCORDING TO THE BEST RECOLLECTION OF ITS CURRENT OFFICERS. (TR. P. 23)
9. CONSTRUCTION OF THE PROPERTY FACILITIES WERE FINISHED IN 1950. THE BUILDING AND OUTSIDE FACILITIES WERE DESIGNED TO ALLOW BOTH WHEEL CHAIR AND AMBULATORY PATIENTS TO MOVE ABOUT. THE MAJORITY OF FUNDING FOR THE CONSTRUCTION PROJECT CAME FROM DONATIONS. (TR. PP. 12, 31; DEPT. EX. NO. 1, PP. 24, 27)
10. THE MAJORITY OF CURRENT FUNDING FOR APPLICANT COMES FROM DONATIONS. (TR. PP. 12, 14; DEPT. EX. NO. 1, P. 17)

CONCLUSIONS OF LAW

SECTION 2 OF THE RETAILERS' OCCUPATION TAX ACT (35 ILCS 120/2) IMPOSES A TAX UPON PERSONS ENGAGED IN THE BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT RETAIL. SECTION 2-5 OF THE ACT PROVIDES AN EXEMPTION FOR:

(11) "PERSONAL PROPERTY SOLD TO A . . . CORPORATION, SOCIETY, ASSOCIATION, FOUNDATION, OR INSTITUTION ORGANIZED AND OPERATED EXCLUSIVELY FOR CHARITABLE . . . PURPOSES. . ."

PURSUANT TO ILLINOIS CASE LAW, AN ENTITY CAN QUALIFY FOR SALES TAX EXEMPT STATUS AS A PURCHASER UNDER THE ROT ACT IF THE CHARITABLE PURPOSE OF THE APPLICANT IS REPRESENTED BY ACTIONS, CONSISTENT WITH EXISTING LAW, UNDERTAKEN FOR THE BENEFIT OF AN INDEFINITE NUMBER OF PERSONS, FOR THE GENERAL WELFARE, OR WHICH IN SOME WAY REDUCE THE BURDENS OF GOVERNMENT. SEE GAS RESEARCH INSTITUTE V. DEPARTMENT OF REVENUE, 154 ILL.APP. 3D 430, 435 (FIRST DIST. 1987), CITING METHODIST OLD PEOPLES HOME V. KORZEN, 39 ILL.2D 149, 156-57 (1968). WHILE THE LATTER CASE DEALT WITH A PROPERTY TAX EXEMPTION FOR REAL ESTATE, ITS DECISION ESTABLISHED STANDARDS ALSO APPLICABLE FOR ANALYSIS WHEN THE ISSUE IS EXEMPTION FROM SALES TAX. INCLUDED IN THESE STANDARDS FOR A CHARITABLE ORGANIZATION ARE CRITERIA THAT IT HAVE NO CAPITAL, CAPITAL STOCK OR SHAREHOLDERS AND EARN NO PROFITS OR DIVIDENDS, BUT RATHER DERIVE ITS FUNDS MAINLY FROM PRIVATE OR PUBLIC CHARITY. YALE CLUB V. DEPARTMENT OF REVENUE, 214 ILL.APP. 3D 468, 477 (FIRST DIST. 1991)

IN THE INSTANT CASE I FIND APPLICANT'S OPERATION AND MAINTENANCE OF THE PROPERTY AS A RECREATIONAL FACILITY FOR DISABLED VETERANS AND NURSING HOME RESIDENTS TO BE A CHARITABLE ACTIVITY THAT BENEFITS THE WELL-BEING OF SOCIETY AND REDUCES THE BURDENS OF GOVERNMENT THROUGH PROVIDING AMUSEMENT AND RELAXATION FOR SENIOR CITIZENS. I FURTHER FIND THAT THE APPLICANT'S POLICY OF ALLOWING OTHER ORGANIZATIONS TO USE THE PROPERTY, WITHOUT CHARGING FEES, TO BE CONSISTENT WITH CHARITABLE STANDARDS ESTABLISHED BY CASE LAW AND REGULATIONS.

WHEN THE DEPARTMENT DENIED THE EXEMPTION BY LETTER DATED DECEMBER 11, 1995, IT STATED THE PURPOSE OF APPLICANT'S ORGANIZATION IS FOR SOCIAL, CIVIC, EDUCATIONAL AND PATRIOTIC ACTIVITIES, AND THAT IT COULD NOT GRANT A SALES TAX EXEMPTION TO SOCIAL, CIVIC AND PATRIOTIC ORGANIZATIONS. (DEPT. EX.

NO. 1, PP. 3-4) THE DEPARTMENT WAS REFERRING TO THESE PURPOSES AS THEY ARE STATED ON APPLICANT'S ARTICLES OF INCORPORATION AS THESE FOUR WORDS "SOCIAL, CIVIC, EDUCATIONAL AND PATRIOTIC." (DEPT. EX. NO. 1, P. 8) HOWEVER, ARTICLE II OF APPLICANT'S BY-LAWS (DEPT. EX. NO. 1, P. 10) EXPOUND THE DESCRIPTION OF APPLICANT'S PURPOSES, AND THIS DETAILED NARRATIVE EXPLANATION IS CONSISTENT WITH THE EVIDENCE ADDUCED AT HEARING.

THE DEPARTMENT ALSO NOTED IN ITS DENIAL LETTER THAT SOME USER GROUPS OF THE PROPERTY INCLUDE ORGANIZATIONS THAT THEMSELVES ARE NOT SALES TAX EXEMPT ORGANIZATIONS. WHILE THIS WAS ACKNOWLEDGED BY APPLICANT AT THE HEARING, I FIND THE LIMITED USE OF THE GROUNDS BY THESE GROUPS TO BE INCIDENTAL AND NOT CONSTITUTE A MAJOR ACTIVITY OR PURPOSE THAT DISQUALIFIES APPLICANT FROM EXEMPTION. §6 ADMIN. CODE, CH. I, SEC. 130.2005(N).

IN SUMMARY, I FIND APPLICANT IS ORGANIZED AND OPERATED EXCLUSIVELY FOR CHARITABLE PURPOSES UNDER SECTION 2-5 OF THE RETAILERS' OCCUPATION TAX ACT.

RECOMMENDATION

BASED UPON MY FINDINGS AND CONCLUSIONS AS STATED ABOVE, I RECOMMEND THE DEPARTMENT REVERSE ITS DECISION OF DENIAL OF SALES TAX EXEMPT STATUS AS A PURCHASER AND AWARD APPLICANT A SALES TAX EXEMPTION IDENTIFICATION NUMBER UNDER THE RETAILERS' OCCUPATION TAX ACT, THE USE TAX ACT, THE SERVICE OCCUPATION TAX ACT, AND THE SERVICE USE TAX ACT, AND ANY RELATED APPLICABLE LOCAL SALES TAXES.

JUDGE

KARL W. BETZ, ADMINISTRATIVE LAW